STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 9, 2005
v	No. 252932 Wayne Circuit Court
DAVID SUTTON, JR., Defendant-Appellant.	LC No. 03-005752-01

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of attempt to make a false report of a felony, MCL 750.411a,[1] MCL 750.92, and attempt to commit insurance fraud, MCL 500.4511, MCL 750.92. Defendant's convictions stem from his reports to both the Detroit Police Department and his insurance company that his car had been stolen, and claiming that he had seen the car the day before he made the reports, when the car had actually been impounded for almost two weeks prior to the reports being made. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court erred when it denied his pretrial motion to quash the information, because the trial court misinterpreted MCL 750.411a(1), thereby subjecting him to an impermissible *ex post facto* prohibition. Because defendant failed to present this *ex post facto* argument before the trial court, it is unpreserved and will be reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 762; 597 NW2d 130 (1999). We review de novo questions of statutory interpretation. *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004). We also review de novo a circuit court's decision whether a lower court abused its discretion in binding a defendant over for trial. *People v Schut*, 265 Mich App 446, 452; 695 NW2d 551 (2005).

Defendant first reported that his car was stolen to a civilian employee of the police department over the telephone. Later, he provided a statement that his car had been stolen to

[1] MCL 750.411a was recently amended, effective July 1, 2004. The new version of the statute includes false reports made to 9-1-1 operators and other governmental employees who receive reports of crimes.

Officer James Sharpe.[2] Defendant now contends that, based on the plain language of MCL 750.411a(1) at the time he was convicted and sentenced, a false report of a felony made to a civilian employee of the police department does not constitute the crime of filing a false report because it was not made to a sworn police officer. Because it is clear from Officer Sharpe's testimony that defendant also reported the crime to him, this argument is misplaced.

Initially, we note that challenges to the elements of an offense and the requisite intent to commit the offense are questions for the trier of fact, and are not suitable for determination upon a motion to quash. See *People v Green*, 260 Mich App 710, 719; 680 NW2d 477 (2004). The trial court thus did not err when it denied defendant's motion to quash. Additionally, to properly claim that he was subjected to an *ex post facto* prohibition, defendant must establish that he was subjected to, and disadvantaged by, a retrospective statute. *People v Stevenson*, 416 Mich 383, 397; 331 NW2d 143 (1982); *People v Slocum,* 213 Mich App 239, 242; 539 NW2d 572 (1995). This Court fails to see how defendant could have been subjected to, or disadvantaged by, an amendment to MCL 750.411a(1) that passed approximately five months after he was sentenced. Therefore, defendant's *ex post facto* challenge to the trial court's application of MCL 750.411a must fail.

Defendant also challenges the sufficiency of the evidence supporting his conviction for attempt to commit insurance fraud. "[W]hen reviewing sufficiency of the evidence claims, courts should view all the evidence – whether direct or circumstantial – in a light most favorable to the prosecution to determine whether the prosecution sustained its burden." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Defendant specifically challenges the knowledge and intent elements and the requirement contained in MCL 500.4503(a) that any false information contained in a statement given to his insurer must be material. Defendant's car had been impounded since August 26, 2002, and he reported it stolen on September 4, 2002, claiming that he had last seen the car on September 3, 2002. Contrary to defendant's assertions, his statement regarding when he had last seen his car was a material fact. Moreover, there were inconsistencies about where defendant left the car, whether he last saw it during the day or night, and the number of keys that existed. Therefore, when viewed in the light most favorable to the prosecution, there was sufficient circumstantial evidence presented at trial to prove that defendant had the requisite knowledge and intent to sustain his conviction of attempt to commit insurance fraud.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray

[2] Although Officer Sharpe did not testify at the preliminary examination, he did testify at trial. Even if we were persuaded by defendant's argument, any error committed by the magistrate in binding defendant over for trial would be rendered harmless by the presentation of sufficient evidence at trial. *People v Libbett*, 251 Mich App 353, 358; 650 NW2d 407 (2002).